

Receipt Number

540758

9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONTINENTAL MARKETING SERVICES, LTD.,
a foreign corporation,

Case No.

Plaintiff,

v.

THE BURKE GROUP,
d/b/a BUR-CAM PUMPS USA, INC.,
a foreign corporation,

Defendant.

Case: 2:06-cv-11614

Assigned To: Hood, Denise Page

Referral Judge: Majzoub, Mona K

Filed: 04-04-2006 At 02:33 PM

CMP CONTINENTAL MARKETING SERVICES
INC V THE BURKE GROUP, ET AL (TAM)

**THE MANUFACTURER'S REPRESENTATIVE
LAW CENTER, PLLC**

Thomas R. Warnicke (P47148)

Zachary B. Mack (P62742)

Attorneys for Plaintiff

1701 Cass Lake Road

Keego Harbor, MI 48320

(248) 738-5000

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Continental Marketing Services, Ltd., by and through its attorneys, THE
MANUFACTURER'S REPRESENTATIVE LAW CENTER, PLLC, complains against
Defendant as follows:

Jurisdictional Allegations

1. Plaintiff, CONTINENTAL MARKETING SERVICES, LTD., is a corporation
incorporated in under the laws of the State of Illinois, with its principal place of

Manufacturer's Representative Law Center - 1701 Cass Lake Road - Keego Harbor, MI 48320 - (248) 738-5000

business in Westchester, Illinois. At all times pertinent hereto, Plaintiff has done business as a manufacturer's sales and service representative throughout the Midwest, including in the State of Michigan.

2. Defendant, THE BURKE GROUP, a/k/a BUR-CAM PUMPS USA, INC., is a foreign corporation, with its principal place of business in Laval, Quebec, Canada. At all times pertinent hereto, Defendant has engaged in the business of manufacturing, distributing and/or selling various products throughout the United States, including the State of Michigan.
3. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332. Jurisdiction is based upon diversity.

General Allegations

4. In 2002, Plaintiff and Defendant entered into a business agreement wherein Plaintiff was to serve as Defendant's sales representative.
5. In consideration of Plaintiff's efforts under the agreement, Defendant agreed to pay Plaintiff a commission on all sales Plaintiff generated in its assigned territory.
6. Plaintiff successfully generated sales of Defendant's products in the assigned territory, which included the State of Michigan.
7. During the last part of 2004, Defendant informed Plaintiff that it was terminating the parties' agreement.
8. At the time of termination, Plaintiff had generated sales in its assigned territory from which it was entitled to commissions, including the State of Michigan.
9. The sales Plaintiff generated before its termination resulted in the realization of substantial payments for Defendant after Plaintiff's termination.

10. Defendant has not paid Plaintiff the agreed upon commission for all sales Plaintiff had generated in its assigned territory, including the State of Michigan.

COUNT I - BREACH OF CONTRACT

11. Plaintiff re-alleges the above paragraphs.
12. Defendant breached the parties' agreement by failing to pay Plaintiff all of the commissions that were due and owing to it before termination and/or post-termination commissions that have since become due and are owed to it.
13. As a result of Defendant's breaches, Plaintiff has incurred substantial damages via its unpaid commissions, in an amount in excess of \$75,000.00, exclusive of interest and costs.

WHEREFORE, Plaintiff demands judgment against Defendant in whatever amount in excess of \$75,000.00 it is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred.

COUNT II - VIOLATION OF MCL 600.2961

THE MICHIGAN SALES REPRESENTATIVE COMMISSION ACT

14. Plaintiff re-alleges the above paragraphs.
15. Pursuant to MCL 600.2961(1)(d) of the Michigan Sales Representative Commission Act (hereinafter referred to as the "Act"):
- “(d) ‘Principal’ means a person that does either of the following:
- (i) Manufactures, produces, imports, sells or distributes a product in this state.
- (ii) Contracts with a sales representative to solicit orders for or sell a product in this state.”

16. Defendant manufactures, produces, imports, sells or distributes a product in the State of Michigan.
17. Defendant is principal within the meaning of the Act.
18. Pursuant to Section 1(e) of the Act:
 - “(e) ‘Sales representative’ means a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for re-sale by that sales representative.”
19. Plaintiff contracted with Defendant for the solicitation of orders or sale of goods, and was paid, in whole or in part, by commission.
20. Plaintiff is a sales representative within the meaning of the Act.
21. Pursuant to Section 4 of the Act:
 - “(4) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.”
22. Commissions were due to Plaintiff at the time of termination that have not been paid within 45 days after termination.
23. Further, commissions have become due after termination that have not been paid within 45 days after the date on which they were due.
24. Pursuant to Section 5 of the Act:

“(5) A principal who fails to comply with this section is liable to the sales representative for both of the following:

- (a) Actual damages caused by the failure to pay the commissions when due.
- (b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.”

- 25. Defendant has intentionally failed to pay commissions within the time periods set by MCL 600.2961.
- 26. As a proximate result of Defendant’s violations of the Act, Plaintiff has incurred monetary damages.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$75,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with statutory penalties, costs, interest and attorney fees so wrongfully incurred.

COUNT III – PROCURING CAUSE DOCTRINE

- 27. Plaintiff re-alleges the above paragraphs.
- 28. In the alternative, if no express agreement is found to have existed between Plaintiff and Defendant as to commissions to which Plaintiff would be entitled to in the event of termination, Plaintiff’s entitlement to post-termination commissions is governed by the Procuring Cause Doctrine.
- 29. Under the Procuring Cause Doctrine, Plaintiff is entitled to commissions on all sales of Defendant’s products to accounts generated as a result of Plaintiff’s

efforts during the course of representing Defendant, even if the sales take place after the termination of the parties' agreement.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$75,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred. Plaintiff also demands judgment against Defendant declaring that Defendant shall pay Plaintiff a commission on all sales of Defendant's products for which Plaintiff was the procuring cause.

COUNT IV - UNJUST ENRICHMENT

30. Plaintiff re-alleges the above paragraphs.
31. Defendant has received significant financial benefits through its wrongful acts stated herein, and Plaintiff has lost its financial expectations.
32. Defendant has no valid legal or equitable claim to the financial benefits it has derived from its wrongful acts.
33. It would be inequitable for Defendant to retain such benefits.
34. Defendant has been unjustly enriched at Plaintiff's expense.

WHEREFORE, Plaintiff is entitled to an award equal to the amount of Defendant's unjust enrichment so as to divest the inequitable benefits from Defendant and return them to its rightful owner.

Respectfully submitted,

**THE MANUFACTURER'S REPRESENTATIVE
LAW CENTER, PLLC**

By: 

Thomas R. Warnicke (P47148)

Zachary B. Mack (P62742)

Attorneys for Plaintiff

1701 Cass Lake Road

Keego Harbor, MI 48320

(248) 738-5000

JURY DEMAND

Plaintiff hereby demands a jury trial of this matter.

Respectfully submitted,

**THE MANUFACTURER'S REPRESENTATIVE
LAW CENTER, PLLC**

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26/25

JS 44 (Rev. 11/04)

CIVIL COVER SHEET County in which this action arose Oakland

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Continental Marketing Services, Ltd.

(b) County of Residence of First Listed Plaintiff Cook

(EXCEPT IN U.S. PLAINTIFF CASES)

Thomas R. Warnicke (P47148)

Man. Rep. Law Center, PLLC

(c) Attorney's (Firm Name, Address, and Telephone Number)

1701 Cass Lake Road

(248) 738-5000

DEFENDANTSThe Burke Group, d/b/a
Bur-Cam Pumps USA, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Select One Box Only)☐ 1 U.S. Government
Plaintiff☐ 3 Federal Question
(U.S. Government Not a Party)☐ 2 U.S. Government
Defendant☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Select One Box for Plaintiff
and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State

PTF DEF
☐ 1 ☐ 1Incorporated or Principal Place
of Business in This StatePTF DEF
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2Incorporated and Principal Place
of Business in Another State☒ 5 ☐ 5Citizen or Subject of a
Foreign Country☐ 3 ☒ 3

Foreign Nation

☐ 6 ☐ 6**IV. NATURE OF SUIT** (Select One Box Only)**CONTRACT**

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment
& Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted
Student Loans
(Excl. Veterans)
☐ 153 Recovery of Overpayment
of Veteran's Benefits
☒ 160 Stockholders' Suits
☐ 170 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS**PERSONAL INJURY**

- ☐ 310 Airplane
☐ 315 Airplane Product
Liability
☐ 320 Assault, Libel &
Slander
☐ 330 Federal Employers'
Liability
☐ 340 Marine
☐ 345 Marine Product
Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle
Product Liability
☐ 360 Other Personal
Injury

PERSONAL INJURY

- ☐ 362 Personal Injury -
Med. Malpractice
☐ 365 Personal Injury -
Product Liability
☐ 368 Asbestos Personal
Injury Product
Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal
Property Damage
☐ 385 Property Damage
Product Liability

FORFEITURE/PENALTY☐ 610 Agriculture☐ 620☐ 625☐ 630☐ 640☐ 650☐ 660☐ 690**BANKRUPTCY**☐ 422 Appeal 28 USC 158**OTHER STATUTES**☐ 400 State Reapportionment

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CMP CONTINENTAL MARKETING SERVICES
, INC V THE BURKE GROUP, ET AL (TAM)**REAL PROPERTY**

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/
Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities -
Employment
☐ 446 Amer. w/Disabilities -
Other
☐ 440 Other Civil Rights

PRISONER PETITIONS

- ☐ 510 Motions to Vacate
Sentence
Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

☐ 710 Fair Labor Standards
Act☐ 720 Labor/Mgmt. Relations☐ 730 Labor/Mgmt. Reporting
& Disclosure Act☐ 740 Railway Labor Act☐ 790 Other Labor Litigation☐ 791 Empl. Ret. Inc.
Security Act**FEDERAL TAX SUITS**☐ 861 HIA (1395ff)☐ 862 Black Lung (923)☐ 863 DIWC/DIWW (405(g))☐ 864 SSID Title XVI☐ 865 RSI (405(g))☐ 870 Taxes (U.S. Plaintiff
or Defendant)☐ 871 IRS - Third Party
26 USC 7609**Exchange**☐ 875 Customer Challenge
12 USC 3410☐ 890 Other Statutory Actions☐ 891 Agricultural Acts☐ 892 Economic Stabilization
Act☐ 893 Environmental Matters☐ 894 Energy Allocation Act☐ 895 Freedom of Information
Act☐ 900 Appeal of Fee
Determination Under
Access to Justice☐ 950 Constitutionality of
State Statutes**V. ORIGIN**

(Select One Box Only)

☒ 1 Original
Proceeding☐ 2 Removed from
State Court☐ 3 Remanded from
Appellate Court☐ 4 Reinstated or
Reopened☐ 5 Transferred from
another district
(specify)☐ 6 Multidistrict
Litigation☐ 7 Appeal to District
Judge from
Magistrate
Judgment**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

Brief description of cause:

Unpaid Sales Commission Dispute

**VII. REQUESTED IN
COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

75,000+

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes☐ No**VIII. RELATED CASE(S)
IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 4, 2006

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING JFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
